



Crl.R.C. No.1249 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2023

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THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

Crl.R.C.No.1249 of 2023 &

Crl.M.P. No.9861 of 2023

Sivakumar @ Siva

...Petitioner

Vs.

State Rep. by
Inspector of Police
Q Branch CID, Chennai
(Crime No.4/2013)

... Respondent

Prayer : Criminal Revision Petition filed under Section 397 read with 402 Cr.P.C. against the orders passed by the VI Additional Sessions Judge, Chennai, in Crl.M.P. No.6286 of 2020 dated 23.03.2023.

For Petitioner : Mr.S. Amarnath

For Respondent : J. Subbiah

Government Advocate (Crl. side)

ORDER

Challenging the orders dated 23.03.2023, passed in Crl.M.P.No.6286 of 2020 in C.A. No.303/2019, by the learned VI



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Additional Sessions Judge, Chennai, the present Criminal Revision Petition has been filed by Sivakumar @ Siva (accused in CC No.252/2015).

2. The abovesaid Criminal Miscellaneous petition was filed by the present petitioner under Section 391 Cr.P.C. to receive additional documents before the appellate court. The documents sought to be marked by the revision petitioner are, (1) an agreement between the Government of India and Government of Ceylon dated 30.10.1964 and (2) the National Population Register Acknowledgement. The petitioner had filed these two documents along with Crl.M.P. No.6286/2020 before the VI Additional Sessions Court, Chennai, where Crl.A. No.303 of 2010 is pending.

3. The present revision petitioner is the first accused in CC No.252/2015 on the file of II Metropolitan Magistrate Court, Chennai, and he was convicted and sentenced on 03.02.2018 as follows:



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S.No .	Provision under which convicted	Sentence
1	12(1A)(a) and (b) of Indian Passport Act	Rigorous imprisonment for two years and to pay a fine of Rs.10,000/- .
2.	Section 471 IPC	Rigorous imprisonment for one year.
3.	Section 14-A(b) of Foreigner's Act, 1946.	Rigorous imprisonment for two years and to pay a fine of Rs.10,000/- .

4. The case of the prosecution is as follows:

- i. The petitioner/accused promised the defacto complaint to send him to Australia by sea and also extracted a sum of Rs.1,80,000/- from him.
- ii. Since the present revision petitioner/accused did not keep up his promise and also did not give the money back to the defacto complainant, the latter lodged a complaint with the respondent police 'Q' Branch CID, Chennai.
- iii. The Inspector of Police 'Q' Branch CID, registered an FIR in Crime No.4/2013 and after concluding the investigation laid a final report against the present revision petitioner and others in C.C. No.252/15 before the II Metropolitan Magistrate Court, Chennai,



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- iv. As against the conviction and sentence passed by the trial court, the present revision petitioner preferred an appeal in C.A. No.303/2019 before the VI Additional Sessions Judge, Chennai.
- v. When the matter was posted for arguments, the present revision petitioner filed a petition under Section 391 Cr.P.C. to adduce additional documents.
- vi. The appellate court, after analysing the documents adduced by the present revision petitioner, had concluded that both the documents are irrelevant for deciding the appeal since the names of the parents of the accused are not mentioned in the first document and there is nothing to show that the second document was issued in favour of the accused. The observation of the appellate court is extracted hereunder:

"7.The trial court, after elaborate trial, has found the petitioner/1st accused as guilty as above stated and



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sentence of imprisonment were awarded against the petitioner/1st accused. The trial court, in its judgment, has found that the petitioner/accused had forged school transfer certificate and managed to obtained passport and the said finding is supported by the evidence given by the Passport Officer and Ex.P12 letter given by school headmaster at Aavudiarkoil, Pudukottai District. Moreover, the prosecution has proved that the petitioner/accused has absconded from the Refugee Camp, Mandapam. However, the petitioner/appellant has been claiming that he is a citizen of India born to their parents in India and their parents alone were at Sri Lank and subsequent to the Indo-Sri Lankan agreement, parents of the petitioner have come down to India during 1964 and the petitioner/accused was born in India. Whereas, the learned Trial Judge in page 6 of the judgment, held that the petitioner/1st accused has not filed any material to conclude that A1 is or his parents are expatriates from Sri Lanka in accordance with Indo-Sri Lankan Agreement. The said alleged fact is within the knowledge of the 1st accused/petitioner and he alone shall alone prove the said fact, but on the contrary the petitioner/accused has not proved the said facts. The



petitioner/1st accused has not produced the Indo-Sri Lankan agreement before the trial court to prove that they are expatriates from Sri Lanka by virtue of India-Srilankan agreement in 1964. Therefore, the petitioner/1st accused, in order to prove the Indo-Sri Lankan agreement during 1964, has filed the present petition under Section 391 of Cr.P.C. to receive the copy of the agreement between the Government of India and the Government of Ceylon on 30th October 1964 and also a National Population Register acknowledgement receipt. The petitioner has filed these two documents along with the present petition. It seems that the petitioner/1st accused has taken the 1st document, namely agreement between the Government of India and Government Ceylon regarding the status and future of persons of Indian Origin in Ceylon. On careful perusal of said documents, nowhere this court could found the name of the parents of the petitioner/accused that they returned to India by virtue of the 1964 agreement between India and Ceylon. Similarly, another document sought to be received is a receipt issued by the Director of Census, namely National Population register acknowledgement. On careful perusal of the 2nd document, even prima



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facie, it cannot be ascertained that the second document was issued in favour of the petitioner/1st accused.

8.The nature and contents of the document referred in the petition sought to be received in evidence as contemplated under Section 391 Cr.P.C., even assuming without admitting are received in evidence, I am of the view that it will not serve any purpose in favour of the petitioner/accused. Where the documents sought to be received in evidence at the appeal stage is helpful to administer complete justice, the same can be received in evidence. Whereas those documents referred in the petition will not be helpful to the case of the petitioner/appellant. In the light of the foregoing discussions, I don't find any merit in the petition and the petition deserves to be dismissed."

The above observations of the first appellate court cannot be found fault with and it appears that the present revision petitioner is adopting delaying tactics. Therefore, the appellate court is directed to dispose of the Criminal Appeal within a period of one month from the date of receipt of a copy of this order.



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5. In the result,

i. the Criminal Revision Petition is dismissed. No costs.

Consequently connected miscellaneous petition is also dismissed.

ii. the orders passed by the VI Additional Sessions Judge, Chennai, in Crl.M.P. No.6286 of 2020 dated 23.03.2023, is confirmed.

iii. The VI Additional Sessions Judge, Chennai, is directed to dispose of Crl.A. No.303 of 2019, within a period of one month from the date of receipt of a copy of this order.

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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga

To

1. The VI Additional Sessions Judge, Chennai.

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R. HEMALATHA, J.
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